

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.544 of 2009

ORDER :

Heard the counsel for petitioner, and Ms.Annapurna Sreeram, learned Standing Counsel for respondent.

2. The petitioner has filed this Writ Petition seeking appointment in the post of driver in existing vacancies in the respondent-University with effect from 30.09.2008 and is also questioning proceedings dt.05.03.2009 issued by the respondent.

3. The petitioner was initially appointed as NMR Watchman in the respondent-University on 11.09.1989. Thereafter, he was appointed as a cleaner on regular basis as per orders dt.15.11.1996 issued by the Vice-Chancellor of the respondent in the scale of pay applicable to the last grade service of Rs.1,375-2,375 (R.P.S., 1993) on probation for two years. He jointed the post on 16.11.1996 and his probation was declared in the cadre of cleaner with effect from 16.11.1998 vide proceedings dt.15.04.1999 issued by the respondent.

4. Since the petitioner was possessing a driving license for both light motor vehicles as well as heavy motor vehicles, his services were utilized as a driver even though he was appointed as a cleaner, since there was a shortage of drivers in the University. The petitioner

alleges that he had been working as a driver for more than 12 years prior to the filing of the Writ Petition.

5. According to petitioner, he is eligible to be appointed to the post of driver since he possesses the qualifications prescribed therefor and since there are vacancies available in the post of driver which arose on 30.09.2008, he should be appointed in the said post so that he can enjoy the higher scale of pay payable for the post of driver. He relies upon order of a Division bench dt.20.12.1995 in W.A.No.1352 of 1995 where in similar circumstances this Court directed the University to appoint by transfer one J. Williams, Watchman to the post of driver in the existing vacancy.

6. The petitioner had filed WPMP.No.659 of 2009 for a direction to the respondent to consider his representation dt.22.09.2008 to the post of driver in the existing vacancy in the University.

7. On 21.01.2009, in WPMP.No.659 of 2009, this Court directed the respondent to consider the said representation.

8. Thereupon, the respondent passed an order on 05.03.2009 stating that the petitioner was only NMR watchman who was appointed as such on 02.09.1989; that he did not complete (5) years as on 25.11.1993 as per G.O.Ms.No.212 Finance & Planning (FW.PC.III) Department dt.22.04.1994 and though he was appointed as a cleaner on 16.11.1996 and his probation was declared on 16.11.1998, audit had raised an objection regarding regularization of

petitioner's services along with that of others and requested the Government to ratify the action taken by the University.

9. It is stated that the said issue is still pending consideration with the State Government and that the University Rules did not provide for promotion to the post of driver from that of cleaner. It is further stated that the order of the Division Bench in W.A.No.1352 of 1995 was not granted on merits and will not apply to petitioner. It is stated that if the Government clears the petitioner's initial appointment as a cleaner, his case would be considered for appointment as a driver duly following the rules.

10. The petitioner filed WPMP.No.14039 of 2009 challenging this order dt.05.03.2009 of the respondent.

11. The counsel for petitioner contends that the stand of respondent that petitioner did not fulfill the conditions in G.O.Ms.No.212 Finance & Planning (FW.PC.III) Department dt.22.04.1994 is untenable, since the petitioner was appointed by the Vice-Chancellor of the respondent in a regular vacancy on 16.11.1996 as a cleaner and his probation was also declared on 16.11.1998; that it is not open to respondent to deny appointment as a driver having utilized his services as a driver for about 12 years prior to the filing of the Writ Petition and even as on date; that there are vacancies available in the post of driver in the respondent-University; and having regard to the order passed by a

Division Bench on 20.12.1995 in W.A.No.1352 of 1995, the petitioner is entitled to be appointed to the post of driver.

12. Counter-affidavit has been filed by respondent reiterating the stand taken in its order dt.05.03.2009.

13. In the counter-affidavit it is admitted that the petitioner was appointed as a cleaner on 16.11.1996 and the probation in the cadre of cleaner was also declared on 16.11.1998. It is contended that on 05.03.2008, the respondent had sought ratification of appointment of the petitioner along with (32) others against vacant sanctioned posts, but the Government has not responded. It is admitted that post of driver fell vacant on 01.10.2008 due to retirement of one Sri G.V. Raghavulu, but since petitioner's initial appointment was pending ratification by the Government, it is contended that he cannot be appointed to the post of driver by transfer unless the Government ratifies his appointment to the post of cleaner. It is stated that asking the petitioner to perform the duties of a driver whenever necessary does not entitle the petitioner to claim the post of driver as a matter of right even though he possesses the requisite qualifications prescribed for being appointed to the post of driver. It is stated that one J. Williams, who was initially appointed as a watchman in the respondent-University in 1988, was selected through a Selection Committee and appointed to the post of watchman on regular basis unlike the petitioner. It is stated that in the case of Sri J. Williams, there was a clear sanctioned vacancy of driver available and he could

be considered in terms of the order in W.A.No.1352 of 1995 obtained by him, but the petitioner cannot get a similar benefit because his initial appointment was yet to be approved.

14. According the Service Rules of the respondent-University, the post of driver of either heavy vehicle or light vehicle can be filled by direct recruitment or recruitment by transfer. However, a person should possess 8th Class or equivalent examination, a valid driving license under the Motor Vehicles Act and has practical experience in driving.

15. It is not disputed that petitioner possesses all these three qualifications.

16. It may be that petitioner was initially appointed as NMR watchman in 1989, but subsequently he was appointed to the post of cleaner on regular basis by proceedings dt.15.11.1996 of the respondent and put on probation for two years. His probation was declared on 16.11.1998 by proceedings dt.15.04.1999 of the respondent.

17. G.O.Ms.No.212 Finance & Planning (FW.PC.III) Department dt.22.04.1994, relied upon by the respondent relates to regularization of services of daily wage employees or NMR's, and has no application to the case of petitioner since the order dt.15.11.1996 appointed the petitioner regularly as a cleaner and not as a daily wage employee or NMR.

18. Admittedly, the petitioner had been working as NMR watchman in 1989 and if his services were regularized, he would be regularized in the post of watchman. The fact that he was appointed as a cleaner in 1996 shows that it is not the case of regularization of petitioner's services at all and he was regularly appointed to a clear vacancy in the post of cleaner. The fact that his probation was declared on 16.11.1998 also corroborates this view. Therefore, the respondent cannot take the stand that petitioner's initial appointment itself was not valid since he did not fulfill the requirement in G.O.Ms.No.212 Finance & Planning (FW.PC.III) Department dt.22.04.1994; and that his initial appointment as a cleaner on 15.11.1996 requires ratification by the Government.

19. The lethargy on the part of respondent in this regard is evident from the fact that, according to the counter, in the year 2008 this clarification on the status of petitioner was sought from the Government on an audit objection, i.e., (12) years after the petitioner's appointment as a cleaner.

20. It is not in dispute that one Sri Khader Shariff was appointed as a driver by the respondent and this was questioned by Sri J. Williams in WP.No.14392 of 1992. A single Judge of this Court disposed of the Writ Petition on 26.06.1995 upholding the appointment of Sri Khader Shariff as driver with a direction to the respondent to consider the case of petitioner, i.e., Sri J. Williams, for being appointed as a

driver if there is any vacancy existing or in a future vacancy, as the case may be.

21. Aggrieved by this order, Sri J. Williams filed W.A.No.1352 of 1995 alleging that he was appointed as a watchman in March, 1998 on regular basis and since he possessed a driving license, the University used to utilize his services as a driver. While, Sri Khader Shariff was appointed as a cleaner on daily wages on NMR basis and he was appointed to the said post instead of the petitioner being considered for it. The Division Bench held that Sri Khader Shariff had been appointed as driver by a duly constituted selection committee after holding interviews in which the petitioner, i.e., Sri J. Williams also appeared. It however held that since the petitioner, Sri J. Williams, therein had been working as a watchman since March, 1988, he should be appointed in the existing vacancy in the post of driver since there appeared to be no other person eligible for appointment to the post of driver by transfer.

22. According to the petitioner, there are at least four existing vacancies in the post of driver in the respondent-University.

23. I have already held that petitioner had been regularly appointed as a cleaner on 15.11.1996 by the respondent and his services are being utilized as a driver since then. Therefore, the petitioner is also entitled to the benefit similar to that granted to Sri J. Williams in W.A.No.1352 of 1995. Therefore, the respondent is directed to

consider appointing the petitioner to the post of driver by transfer in any of the existing vacancies since it is not disputed that he is eligible for the said post as per the service regulations applicable to the post in the respondent-University.

24. This exercise shall be completed within a period of one (01) month from the date of receipt of a copy of the order.

25. Accordingly, the Writ Petition is allowed. No order as to costs.

26. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-02-2017

Ndr/*

